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**From:**

**Sent:** September 9, 2008

**To:**

**Cc:**

**Subject:**

Here's the email response I received from \_\_\_\_\_ in \_\_\_\_\_. He suggests that you also coordinate with \_\_\_\_\_ to see if they agree with his analysis. Let us know if you need anything else.

Issues: (1) Whether Sub can be disregarded as a corporation in \_\_\_\_\_ and therefore deemed to liquidate.

(2) Whether Parent sold Sub Stock to Foreign Corp in late \_\_\_\_\_

**Facts**

Parent purchased all of the stock of Sub in \_\_\_\_\_. Parent and Sub filed consolidated returns.

In \_\_\_\_\_, the business operations of Sub were terminated. At this time Sub was insolvent. Subsequently, the assets of Sub, which included inventory, equipment and real estate were sold by Sub during \_\_\_\_\_. The sale proceeds were used to pay a portion of the secured bank loans which were related to the assets sold. Since Sub's termination of its operations and the sale of its assets, Sub has acquired no assets and has conducted no business operations. In late \_\_\_\_\_, (a time subsequent to the sale of Sub assets). Foreign corp purchased Sub from Parent for a nominal amount of \_\_\_\_\_. There was no stock purchase agreement relating to the sale of Sub stock between Parent and Foreign Corp. A letter of intent (evidencing the sale of Sub stock) dated \_\_\_\_\_ was executed by Foreign Corp and signed by Parent's president.

**Law and Analysis.**

Courts ordinarily will not disregard the corporate entity if the entity has any business purpose or substantial business activity. *Moline Properties, Inc. v. CIR*, 319 U.S. 436, 438-439 (1943). Moreover, the Tax Court has held that a showing of substantial business activity in the post-incorporation period was sufficient, even if the corporation was organized to obtain tax advantages for the shareholder employee. *Daniel F. Keller*, 77 T.C. 1014, 1029-1030 (1981), aff'd, 723 F.2d 58 (10th Cir. 1983).

Substantial business activity seems to require little if anything more than the observance of bookkeeping formalities and similar nonburdensome practices in executing contracts, maintaining a separate bank account, and holding property in the corporate name.

However, if these formalities are not met by the corporate entity, there is a strong argument that the existence of that corporate entity can be disregarded. Furthermore, an active corporation can become a dummy corporation when it ceases to have business activity or purpose. See *Owens v. CIR*, 568 F2d 1233 (6th Cir.1977) (purported sale of S corporation stock treated as indirect distribution of assets to shareholders where corporation no longer served any business purpose).

Whether or not corporation can be disregarded as corporate entity is a purely factual determination. In the instant case, Sub completely terminated its existence in \_\_\_\_\_ (Sub sold all its assets and tendered the proceeds to the bank to pay off the bank loans). Sub subsequent to that time has conducted no business and has held no assets. It could be argued that upon Sub's complete termination of existence in \_\_\_\_\_, Sub should be disregarded as a corporation and therefore deemed to liquidate and cease to exist for all purposes on that date. Therefore, because Sub would be deemed to liquidate in \_\_\_\_\_ there could be no subsequent sale by Parent of Sub stock to Foreign Corp in late \_\_\_\_\_.